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September 4, 1992

BY HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 92-59

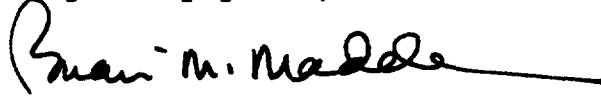
Dear Ms. Searcy:

On behalf of Entertainment Communications, Inc., there are transmitted herewith an original and four copies of its Opposition to Motion to Strike and Response to Reply in connection with the above-referenced rule making proceeding involving a proposed substitution of FM channels at Bradenton, Florida.

Attached to this filing is a telecopy of a letter from the Federal Aviation Administration; the original of this letter is in the mail and will be filed upon its receipt by the undersigned counsel.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Very truly yours,


Brian M. Madden

Attachments

cc: Michael C. Ruger, Esq.
George R. Borsari, Jr., Esq.
William D. Freedman, Esq.

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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission

In the Matter of)
)
Amendment of Section 73.202(6),) MM Docket No. 92-59
Table of Allotments) RM-7923
FM Broadcast Stations)
(Bradenton, Florida))

To: Chief, Allocations Branch
Mass Media Bureau

CONSOLIDATED OPPOSITION TO MOTION TO STRIKE AND RESPONSE TO REPLY

Entertainment Communications, Inc. ("Entercom"), by its attorneys, and pursuant to the provisions of Section 1.45(a) of the Commission's rules, submits these consolidated comments in opposition to the Motion to Strike and to the Reply to Opposition to Joint Request for Approval of Settlement Agreement, or, Alternatively, Supplement to Comments of Entertainment Communications, Inc. ("Reply"), submitted in this proceeding on August 27, 1992, by Sunshine State Broadcasting Company, Inc. ("Sunshine").

Sunshine has accused Entercom of failing to seek permission to file additional material relevant to the full and proper consideration of Sunshine's proposal in this proceeding to substitute Channel 278C for Channel 277C for use by its Station WDUV(FM), licensed to Bradenton, Florida. Sunshine cannot dispute Entercom's right under the rules to file comments regarding the proposed settlement agreement struck by Sunshine with the proponent

of a counter-proposal filed in this proceeding. But Entercom can understand why Sunshine would like to curtail further scrutiny about the suitability of the transmitter site proposed "as a special reference point for the [requested] allocation," see, Petition for Rulemaking, filed February 12, 1992, at Engineering Exhibit RM, p. 2, especially as concerns the severe Federal Aviation Administration constraints on the construction of a tall tower in this area which have been acknowledged by Sunshine and addressed by experts for both Sunshine and Entercom. Because of these substantial, recognized, safety concerns, Entercom believes that the consideration of any information relative to this issue is not only germane, but essential, to the resolution of this proceeding. Accordingly, for the development of a full and complete record with respect to the requested channel substitution, Entercom respectfully requests, to the extent it is deemed necessary or appropriate by the Commission, authority to file additional information concerning the air safety concerns which from the beginning have been the core element to be resolved in this proceeding.

As indicated in Entercom's last filing, the Federal Aviation Administration was asked by Entercom to study the construction of a tower meeting the minimum Class C requirements at the site specified by Sunshine in its rule making request. Entercom submits that the accompanying letter from the FAA expressing that agency's substantial objections to the construction of a tall tower at the

"special reference point" identified by Sunshine is of crucial relevance to the Commission's allocation decision, since the FAA unambiguously confirms that the construction of such a tower at the Sunshine site will constitute a hazard to air navigation for many of the reasons first identified by Entercom in its Comments submitted herein on May 21, 1992. Additionally, the FAA expresses its grave concerns that the operation of Station WDUV from the specified site would create substantial potential for electromagnetic interference jeopardizing the functioning of the instrument landing system on certain runways at the St. Petersburg Clearwater International Airport, the Lakeland Linder Regional Airport, and the Tampa International Airport.^{1/} There is no longer any mere "dispute between experts," as Sunshine has characterized it, which can be ignored by the Commission in this allocation proceeding. Rather, the only site that has been proposed by Sunshine for use as a transmitter location to meet the Commission's spacing rules and the minimum Class C operating standards has been

^{1/} Entercom acted with due diligence to seek the FAA's determination of these safety concerns once it became clear from Sunshine's Consolidated Reply Comments, filed June 17, 1992, that it had not, and apparently would not, attempt to secure any assurance that the site it claims is suitable for use as a transmitter location would satisfy the FAA's standards. In doing so, Entercom's consultants did nothing disingenuous or misleading; a consultant will often in this manner seek the FAA's opinion about potential transmitter sites prior to filing an application with the FCC. As to Sunshine's posturing about whether or not a "proposal" exists for the site which Sunshine has asked the FCC to consider on a "special" basis, see Reply at pp. 4-5, of course there is a "proposal" -- Sunshine specified a particular site proposal at the very outset of this proceeding.

found by the FAA to present real concerns about air safety. The Commission cannot reasonably resolve this proceeding without considering the FAA's view on this matter.

Sunshine has argued that any air safety concerns should be disregarded until the application stage, following the Commission's approval of Sunshine's rule making proposal. In effect, Sunshine urges that the Commission trust Sunshine to find an acceptable transmitter site "in the future." But the Commission's rules and precedent are clear -- no allocation proposal can be granted if there is not even a feasible location that will be suitable for use as a transmitter site. Entercom has previously noted that Sunshine's aeronautical consultant has never affirmatively identified a single location within the fully-spaced permissible site zone that will receive FAA clearance. Given Sunshine's past difficulties in attempting to satisfy the FAA's concerns, one would think that Sunshine would have filed on its own for an FAA ruling at the "special" site to establish a conclusive showing of the existence of a suitable site rather than asking the Commission to assume along with Sunshine that such a site exists. Sunshine did not. Stripped of their rhetoric, Sunshine's contentions seem to Entercom to be plainly indefensible; Sunshine has no support to offer for its assertion that the site selected so carefully is suitable for use a Class C transmitter location. Sunshine might

wish that it could defer this matter to the application stage,^{2/} but the Commission's allocation procedures require that the issue of the availability of a fully-spaced, suitable transmitter site be adequately resolved before the allocation requested by Sunshine can be approved. See, e.g., FM Table of Allotments (West Palm Beach, Florida), 6 F.C.C. Rcd. 6975, 6976 (1991); FM Table of Allotments (Crestview and Westbay, Florida), 7 F.C.C. Rcd. 3059 (1992).

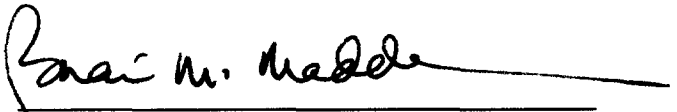
In reaching its decision in this allocation proceeding, the Commission cannot ignore the FAA's analysis of the site in question and can no longer simply dismiss the air safety matters raised by Entercom as only a subjective disagreement among experts. Based on the record in this proceeding, Entercom submits that the Commission cannot presume that there is a theoretical site which is suitable for use as proposed by Sunshine, and, accordingly,

^{2/} For reasons previously explained, Entercom suspects that Sunshine's real intention is to avoid this issue at the application stage through use of a directional antenna from a short-spaced site. See Comments of Entertainment Communications, Inc., filed May 21, 1992, at p. 8; Opposition to Joint Request for Approval of Settlement Agreement, or, Alternatively, Supplement to Comments of Entertainment Communications, Inc., filed August 17, 1992, at pp. 2-3.

Entercom urges that the Commission deny the requested channel substitution.

Respectfully submitted,

ENTERTAINMENT COMMUNICATIONS, INC.

By 
Brian M. Madden

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Suite 600
Washington, D.C. 20036
Tele: 202/293-3860

Its Attorneys

September 4, 1992



U.S. Department
of Transportation

Federal Aviation
Administration

Southern Region

P. O. Box 20638
Atlanta, Georgia 30320

ACKNOWLEDGEMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

CITY	STATE	LATITUDE/LONGITUDE	MSL	AGL	AMSL
REMLAP	FL	27-49-20.00 082-21-50.00	24	1025	1049

AVIATION SYSTEMS ASSOCIATES
SKYPARK BUILDING 3
23430 HAWTHORNE BLVD., SUITE 200
TORRANCE, CA 90505

AERONAUTICAL STUDY
No: 92-ASO-1364-OE

Type Structure: ANTENNA TOWER 103.5 MHZ, 100 KW

The Federal Aviation Administration hereby acknowledges receipt of notice dated 06/30/92 concerning the proposed construction or alteration contained herein.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

The proposed construction would exceed FAA obstruction standards and further aeronautical study is necessary to determine whether it would be a hazard to air navigation. Pending completion of any further study, it is presumed the construction would be a hazard to air navigation.

Further study may be requested by the sponsor within 30 days of this acknowledgement.

** If the proposed structure were reduced in height to not exceed 500 feet above ground level (524 feet above sea level), it would not exceed Part 77 obstruction standards.

If the structure is subject to the licensing authority of the FCC, a copy of this acknowledgement will be sent to that Agency.

NOTICE IS REQUIRED ANYTIME THE PROJECT IS ABANDONED OR THE PROPOSAL IS MODIFIED

SIGNED Armando Castro Specialist, Systems Management Branch
Armando Castro (404) 763-7646.

ISSUED IN: East Point, Georgia 09/03/92

** The structure at the proposed height of 1025'AGL/1049'AMSL would increase the minimum vectoring altitude for Tampa Approach Control and create a substantial adverse effect upon the VFR routes that are composed by U.S.41 and I-75 highways, and as such any height greater than 500'AGL/524'AMSL would be considered as a hazard to IFR and VFR aircraft operations. In addition, a potential electromagnetic interference hazard is identified on the second page of this correspondence which requires solution by you. Please advise this office as to your intentions.

cc:FCC

09/03/92 15:04

4047837580

FAA ASO-540

003

INTERMODULATION INTERFERENCE:

Our analysis indicate that aircraft operating in the frequency protect service volume (FPSV) making an instrument landing system (ILS) approach to Runway 17L at the St. Petersburg Clearwater International Airport, Runway 05 at the Lakeland Linder Regional Airport and Runway 18R at the Tampa International Airport will be subject to hazardous three signal/third order intermodulation interference of the type (B) $f_1 + f_2 - f_3$ type resulting in navigation receiver overload. This interference would be caused by the proposed frequency in combination with existing stations as follows:

Type (B):

 $WLVU(106.3\text{MHz}) + \text{Proposed}(103.5\text{MHz}) - WUSA(109.1\text{MHz}) = \text{PIE}(109.1\text{MHz})$ $WKES(101.3\text{MHz}) + \text{Proposed}(103.5\text{MHz}) - WYNF(94.9\text{MHz}) = \text{LAL}(110.1\text{MHz})$ $WWRM(107.3\text{MHz}) + \text{Proposed}(103.5\text{MHz}) - WRBQ(104.7\text{MHz}) = \text{JRT}(108.5\text{MHz})$

Intermodulation interference occurs whenever two or more signals or their integer multiples combine in such a manner that the product is the frequency to which the receiver is tuned. These signals combine in the nonlinear external devices to produce sum and difference frequencies through heterodyne action.

CERTIFICATE OF SERVICE

This is to certify that on the 4th day of September, 1992, a copy of the foregoing CONSOLIDATED OPPOSITION TO MOTION TO STRIKE RESPONSE TO REPLY was addressed as follows and deposited with the U.S. Postal Service with adequate postage, prepaid, to the following:

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